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PTO/SB/21 (09-04)

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission 136

Application Number 10/663,888

Filing Date September 16, 2003

First Named Inventor Carmichael

Art Unit 3744

Examiner Name Zec, Filip

Attorney Docket Number C0959.10U

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
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Remarks

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Rogers Towers, P.A.		
Signature			
Printed name	Thomas C. Saitta		
Date	September 13, 2005	Reg. No.	32,102

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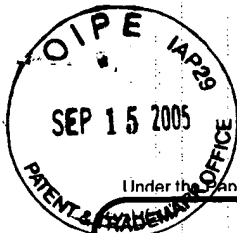
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# FEE TRANSMITTAL

## For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

**Complete if Known**

Application Number	10/663,888
Filing Date	September 16, 2003
First Named Inventor	Carmichael
Examiner Name	Zec
Art Unit	3744
Attorney Docket No.	C0959.10U

**METHOD OF PAYMENT** (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 502260 Deposit Account Name: Rogers Towers, P.A.

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): Appeal Brief Filing Fee - \$250.00

**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent) 32,102	Telephone 904-346-5518
Name (Print/Type)	Thomas C. Saitta	Date September 13, 2005	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Carmichael  
Serial No.: 10/663,888  
Filed: 09/16/2003  
For: Cooler with Ordered Refilling  
Art Unit: 3744  
Examiner: Zec

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In furtherance of the Notice of Appeal having an Office date of receipt of 07/13/2005,  
please find enclosed:

- (1) Appeal Brief (in triplicate)
- (2) Fee Transmittal Form (in duplicate)

Respectfully submitted,

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The undersigned certifies that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below.

September 13, 2005

Date

Thomas C. Saitta



UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Carmichael et al.  
Appl. Serial No.: 10/663,888  
Filed: 09/16/2003  
For: Cooler with Ordered Refilling  
Art Unit: 3744  
Examiner: Zec

**APPEAL BRIEF**

**(1) Real Parties in Interest:**

William Scott Carmichael and Jeffrey Joseph Tolen

**(2) Related Appeals and Interferences:**

None.

**(3) Status of Claims:**

Claims 1 and 3-27 are pending. Claims 1, 3-14 and 16-27 are rejected and claim 15 is objected to but allowable if properly rewritten.

**(4) Status of Amendments:**

All amendments have been entered. No amendments are outstanding.

09/16/2005 NNGUYEN1 00000042 502260 10663888

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(5) Summary of the Invention:

1. In a cooler 10 for beverage containers 99 wherein the beverage containers 99 are chilled by direct contact with ice and ice water 98, said cooler 10 having walls 12 and a bottom 11 defining in combination a main cooling compartment 17 accessible through an open top 13 and sized to retain multiple beverage containers 99 along said bottom 11, the improvement comprising:

a generally vertically oriented chute 20 sized to receive horizontally disposed beverage containers 99 in a generally vertical stack, said chute 20 having a lower opening 25 providing ingress into said main cooling compartment 17; and

a stationary chute ramp member 31 positioned within said chute 20, said chute ramp member 31 directing said lowermost beverage container 99 horizontally through said opening 25 along said bottom 11 and into said main cooling compartment 17.

2. (canceled)

Pg. 5, lines 3-11; Pg. 8, lines 6-16; Figs. 1-3, 5, 6.

Pg. 5, lines 12-22; Pg. 8, line 17 to Pg. 9, line 13; Figs 1-3, 5, 6.

Pg. 6, lines 1-5; Pg. 9, line 14 to Pg. 10, line 2; Pg. 10, lines 14-20; Figs. 2, 3, 6.

3. The cooler 10 of claim 1, the improvement further comprising an opposing stationary ramp member 32 positioned across said bottom 11 opposite said stationary chute ramp member 31, said opposing stationary ramp member 32 directing said beverage containers 99 vertically within said main cooling compartment 17.

Pg. 6, lines 1-3; Pg. 10, lines 3-13; Pg. 11, lines 1-5; Figs 2, 3, 6.

4. The cooler 10 of claim 1, wherein said chute 20 is defined by a divider wall 21 positioned between two opposing walls 12 of said cooler 10 and adjacent a remaining wall 12 of said cooler 10.

Pg. 5, lines 12-22; Pg. 8, line 17 to Pg. 9, line 14; Figs. 1-3, 5, 6.

5. The cooler 10 of claim 4, wherein said divider wall 21 is removable.

Pg. 6, lines 6-7; Pg. 9, lines 5-7; Pg. 11, lines 20-22; Figs 1-6.

6. The cooler 10 of claim 5, the improvement further comprising retaining means 16 on said two opposing walls 12 of said cooler 10 to retain said divider wall 21.

Pg. 9, lines 5-7; Figs. 1, 5.

7. The cooler 10 of claim 6, wherein said retaining means 16 comprise slots in said two opposing walls 12 of said cooler 10.

Pg. 9, lines 5-7; Figs. 1, 5.

8. The cooler 10 of claim 6, wherein said retaining means 16 comprise brackets on said two opposing walls 12 of said cooler 10.

Pg. 9, lines 5-7; Figs. 1, 5.

9. The cooler 10 of claim 1, wherein said stationary chute ramp member 31 is removable from said cooler 10.

Pg. 9, lines 18-20; Figs. 2, 6.

10. The cooler 10 of claim 3, wherein said stationary chute ramp member 31 and said stationary opposing ramp member 32 are removable from said cooler 10.

Pg. 9, lines 18-20; Pg. 10, lines 7-9; Figs. 2, 6.

11. The cooler 10 of claim 1, wherein said chute 20 is defined by a divider wall 21 positioned between two opposing walls 12 of said cooler 10 and adjacent a remaining wall 12 of said cooler 10, and wherein said divider wall 21 and said stationary chute ramp member 31 are removable from said cooler 10.

Pg. 6, lines 6-7; Pg. 9, lines 5-7 and 18-20; Pg. 11, lines 20-22; Figs 1-6.

12. The cooler 10 of claim 3, wherein said chute 20 is defined by a divider wall 21 positioned between two opposing walls 12 of said cooler 10 and adjacent a remaining wall 12 of said cooler 10, and wherein said divider wall 21, said stationary chute ramp member 31 and said opposing stationary ramp member 32 are removable from said cooler 10.

Pg. 6, lines 6-7; Pg. 9, lines 5-7 and 18-20; Pg. 10, lines 7-9; Pg. 11, lines 20-22; Figs 1-6.

13. The cooler 10 of claim 5, wherein said cooler 10 further comprises a lid member 14, and the improvement further comprises a slot 43 disposed within said lid member 14 sized to receive said divider wall 21 for storage.

Pg. 6, lines 13-14; Pg. 8, lines 15-16; Pg. 11, lines 20-22; Fig. 4.

14. The cooler 10 of claim 3, the improvement further comprising a shelf 42 extending from said lower opening 25 of said chute 20 and across said bottom 11 of said cooler 10.

Pg. 6, lines 11-12; Pg. 11, lines 14-19; Fig. 3.

15. The cooler 10 of claim 14, the improvement further comprising a reversing ramp member 33 positioned on a wall 12 of said cooler 10 above said opposing ramp member 32, whereby said beverage cans 99 are diverted onto said shelf 42.

Pg. 6, lines 9-11; Pg. 11, lines 12-15; Fig. 3.



16. The cooler 10 of claim 4, the improvement further comprising apertures 41 positioned in said divider wall 21.

Pg. 6, lines 12-13; Pg. 9, lines 2-4; Fig. 3.

17. A cooler 10 for beverage containers 99 wherein beverage containers 99 are chilled by direct contact with ice and ice water 98, said cooler 10 comprising in combination:

Pg. 5, lines 3-11; Pg. 8, lines 6-10; Figs. 1-3, 5, 6.

four walls 12, a bottom 11, an open top 13, and a lid 14 adapted to cover said open top 13;

Pg. 8, lines 1-16; Figs. 1-6.

a divider wall 21 extending between two opposing walls 12 of said four walls 12 and positioned generally parallel to another of said walls 12, said divider wall 21 having a bottom edge 24 spaced from said bottom 11 to define a lower opening 25, whereby the combination of said divider wall 21 and said another of said walls 12 defines a chute 20 adapted to receive beverage containers 99 aligned in a generally vertical stack; and

Pg. 5, lines 12-22; Pg. 6, lines 1-5; Pg. 8, line 17 to Pg. 10, line 2; Pg. 10, lines 14-20; Figs. 1-6.

a stationary chute ramp member 31 positioned at the junction of said bottom 11 and said another of said walls 12, whereby said stationary chute ramp member 31 directs the lowermost of said beverage containers 99 disposed in said chute 20 horizontally through said lower opening 25 and into said main cooling compartment 17.

Pg. 6, lines 1-5; Pg. 9, line 14 to Pg. 10, line 2; Pg. 10, lines 14-20; Figs. 2, 3, 6.

18. The cooler 10 of claim 17, further comprising an opposing stationary ramp member 32 at the junction of said bottom 11 and one of said side walls 12 opposite from said stationary chute ramp member 31, whereby said opposing stationary ramp member 32 directs said beverage containers 99 in the vertical direction.

19. The cooler 10 of claim 17, wherein said divider wall 21 is removable.

20. The cooler 10 of claim 19, wherein said stationary chute ramp member 31 is removable.

21. The cooler 10 of claim 18, wherein said divider wall 21 is removable.

22. The cooler 10 of claim 21, wherein said stationary chute ramp member 31 and said opposing stationary ramp member 32 are removable.

23. The cooler 10 of claim 17, further comprising apertures 41 positioned in said divider wall 21.

Pg. 6, lines 1-3; Pg. 10, lines 3-13; Pg. 11, lines 1-5; Figs 2, 3, 6.

Pg. 6, lines 6-7; Pg. 9, lines 5-7; Pg. 11, lines 20-22; Figs 1-6.

Pg. 9, lines 18-20; Figs. 2, 6.

Pg. 6, lines 6-7; Pg. 9, lines 5-7; Pg. 11, lines 20-22; Figs 1-6.

Pg. 9, lines 18-20; Pg. 10, lines 7-9; Figs. 2, 6.

Pg. 6, lines 12-13; Pg. 9, lines 2-4; Fig. 3.

24. The cooler 10 of claim 19, further comprising retainer means 16 positioned on said two opposing walls 12 to retain said divider wall 21.

Pg. 9, lines 5-7; Figs. 1, 5.

25. The cooler 10 of claim 24, wherein said retainer means 16 comprises slots positioned on said two opposing walls 12.

Pg. 9, lines 5-7; Figs. 1, 5.

26. The cooler 10 of claim 24, wherein said retainer means 16 comprises brackets positioned on said two opposing walls 12.

Pg. 9, lines 5-7; Figs. 1, 5.

27. The cooler 10 of claim 19, further comprising a slot 43 disposed within said lid 14, said slot 43 adapted to receive said divider wall 21 for storage.

Pg. 6, lines 13-14; Pg. 8, lines 15-16; Pg. 11, lines 20-22; Fig. 4.

**(6) Issues:**

I. Whether Claims 1, 3-14, 17-22 and 24-27 are unpatentable under 35 U.S.C. 102(b) as being anticipated by Nuhrah et al. '017.

II. Whether claims 16 and 23 are unpatentable under 35 U.S.C. 103(a) over Nuhrah et al. '017.

**(7) Grouping of Claims:**

Group I (Claims 1, 3-14, 17-22 and 24-27): Applicant states that the claims of the group do not stand or fall together.

Group II (Claims 16 and 23): Applicant states that the claims of the group do not stand or fall together.

**(8) Argument:**

**I. Whether Claims 1, 3-14, 17-22 and 24-27 are unpatentable under 35 U.S.C. 102(b) as being anticipated by Nuhrah et al. '017.**

The Examiner has rejected these claims under Section 102(a) as anticipated by Nuhrah et al. '017. As previously argued in the Amendment and Response filed 11/10/2004 and in the Response After Final filed on 04/18/2005, it is submitted that Nuhrah et al. '017 does not "describe" the invention under Section 102(a). Simply put, it is submitted that Nuhrah et al. '017 does not meet the minimum requirements for maintaining a rejection based on anticipation, as all of the essential elements set forth in the claim are not identically set forth in Nuhrah et al. '017. Herman v. William Brooks Shoe Co., 54 USPQ2d 1046 (S.D. N.Y. 2000); Gechter v. Davidson, 116 F.3<sup>rd</sup> 1454, 1457, 43 USPQ2d, 1030, 1032 (Fed. Cir. 1997). For anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly, and any feature not directly taught must be inherently present (MPEP Sect. 706.02.IV. and 2131).

In general, Nuhrah et al. '017 discloses a bottle cooling device that comprises a first compartment 2a and a second compartment 2b, the compartments 2a and 2b being open at the top and having a communicating opening at their bottom defined by a central partition 2c (col. 2, lines 42-44). Compartment 2a is defined to be a receiving compartment and compartment 2b is a delivery compartment (col. 2, lines 58-61). The crux of the Nuhrah et al. '017 device is a transfer and elevating mechanism defined generally as oscillating member 5, which transfers the bottles 4 from the receiving compartment 2a to the delivery compartment 2b and elevates the

bottles 4 to the top of the delivery compartment 2b (col. 2, lines 68-76). The transfer and elevating mechanism comprises an oscillating member 5 having side arms or lugs 5a fulcrumed to the container walls and having a curved portion 5b underlying the bottommost bottle 4 in the receiving compartment 2a (col. 2, lines 76-84).

The operation of the Nuhrah et al. '017 device is explained in col. 2, line 88 to col. 3, line 36. The neutral position for the oscillating member 5 is shown in Figure 3, where the curved portion 5b resides below and supports the lowermost bottle 4 in the receiving compartment 2a. To effect the transfer and elevation of the bottles 4, the cover 8 is raised - the cover 8 being attached by rods 6 to the oscillating member 5. This pivots the oscillating member 5 such that the stack of bottles 4 in delivery compartment 2b are raised, as shown in Figure 3a. With the curved portion 5b now pivoted downward, the lowermost bottle 4 in the receiving compartment 2a drops onto the oscillating member 5. Closing the cover 8 then pivots the oscillating member 5 back into the neutral position of Figure 3. A pivoted retaining device 9 prevents the stack of bottles 4 in the delivery compartment 2b from dropping back onto oscillating member 5, the curved portion 5b is again inserted beneath the stack of bottles 4 in the receiving compartment 2a, and the bottle 4 that had been deposited onto the oscillating member 5 from the receiving compartment 2a now rolls into the bottom of delivery compartment 2b. The cycle is repeated whenever the cover 8 is opened, provided a bottle 4 is present in the receiving compartment 2a.

Claim 1:

Independent claim 1 requires (in pertinent part) “a generally vertically oriented chute 20 sized to receive horizontally disposed beverage containers 99 in a generally vertical stack, said chute 20 having a lower opening 25 providing ingress into said main cooling compartment 17; and a stationary chute ramp member 31 positioned within said chute 20, said chute ramp member 31 directing said lowermost beverage container 99 horizontally through said opening 25 along said bottom 11 and into said main cooling compartment 17” (emphasis added). Thus, the corresponding elements of the Nuhrah et al. ‘017 device relative to the ‘888 application would be as follows:

‘888 Application

chute 20

main cooling compartment 17

stationary chute ramp member 31

‘017 Patent

receiving compartment 2a

delivery compartment 2b

none

The Examiner argues in the Final Office Action of 01/19/2005 (page 3, section 4) that the “curved bottom of element 2, Fig. 3” is the disclosure of an element sufficient under Section 102 to anticipate the stationary chute ramp member 31 of the application, and further states that this curved bottom element is “for directing the cans along the bottom of the container.”

This is incorrect. The Examiner has mistakenly reversed the roles of the compartments 2a and 2b of Nuhrah et al. ‘017. The “curved bottom” is not positioned within the receiving compartment 2a (equivalent to chute 20) and it does not direct cans along the bottom of the container, since the movement of bottles 4 is from the receiving compartment 2a into the

delivery compartment 2b (left to right in the drawings), not vice versa. The structure and operation of the Nuhrah et al. '017 device (in particular the oscillating member 5) precludes any movement of bottles 4 from the delivery compartment 2b into the receiving compartment 2a. Thus the "curved bottom" does not direct cans anywhere - at most it serves as a stop to halt the rolling bottle 4. The disclosure of Nuhrah et al. '017 does not explicitly or impliedly teach a stationary chute ramp member 31. The only ramp structure in Nuhrah et al. '017 is the oscillating member 5, which by definition is not stationary, as is required by the language of claim 1.

It is respectfully submitted that Nuhrah et al. '017 does not anticipate Claim 1 and that the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious a stationary chute ramp member 31 as required by Claim 1, since the device of Nuhrah et al. '017 can only function if the oscillating member 5 is not stationary. If the oscillating member 5 was made stationary and merely inclined from the receiving compartment 2a into the delivery compartment 2b, there would be no way to elevate the bottles 4.

Claim 3:

Claim 3, dependent on claim 1, requires (in pertinent part) "an opposing stationary ramp member 32 positioned across said bottom 11 opposite said stationary chute ramp member 31,



said opposing stationary ramp member 32 directing said beverage containers 99 vertically within said main cooling compartment 17.”

The Examiner states that the curved portion 5b of the oscillating member 5 of Nuhrah et al. ‘017 anticipates the opposing stationary ramp member 32. Since the oscillating member 5 is by definition not a stationary member and the functioning of the Nuhrah et al. ‘017 device is dependent upon movement of the curved portion 5b, the curved portion 5b cannot anticipate the opposing stationary ramp member 32. Furthermore, the curved portion 5b of the oscillating member 5 does not vertically direct the bottles 4 into the equivalent of the application’s main cooling compartment 17, but instead prevents the movement of bottles 4 into the delivery compartment 2b.

In fact, there is no structure shown in Nuhrah et al. ‘017 equal to the opposing stationary ramp member 32, and therefore Nuhrah et al. ‘017 does not anticipate Claim 3 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious an opposing stationary chute ramp member 32 opposite to the stationary chute ramp member 31 as required by Claim 3.

Claim 3 is patentably distinct from Claim 1 as there is a particularly defined additional required element that is not required by Claim 1, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 4:

The arguments presented above for Claim 1 apply to Claim 4.

Claim 5:

Claim 5, dependent on claim 4, requires (in pertinent part) a structure where “said divider wall 21 is removable.” The Nuhrah et al. ‘017 structure equal to the divider wall 21 is the central partition 2c. There is no disclosure in Nuhrah et al. ‘017 that the central partition 2c is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then the central partition 2c is “removable” as expressed in Claim 5 (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 5 only makes logical sense if the divider wall 21 is removable relative to the chute 20 and main cooling compartment 17, since it is the divider wall 21 that defines these two areas. Since the Examiner cites compartments 2a and 2b of Nuhrah et al. ‘017 as corresponding to chute 20 and main cooling compartment 17 of the application, the argument that central partition 2c is removable since the entire unit 2 is removable relative to another larger container 1 does not follow.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 5 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious removable divider wall 21 as required by Claim 5.

Claim 5 is patentably distinct from Claims 1 and 4 as there is a particularly defined additional required element that is not required by Claims 1 or 4, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 6:

Claim 6, dependent on claim 5, requires (in pertinent part) "retaining means 16 on said two opposing walls 12 of said cooler 10 to retain said divider wall 21." The Examiner states the retaining means is the "outer lip (1, Fig. 1)" of Nuhrah et al. '017 (page 3, section 4). This is not corresponding structure, since element 1 of Nuhrah et al. '017 is the larger ice box, and thus does not "retain" the central partition 2c as required by the claim language.

Therefore Nuhrah et al. '017 does not anticipate Claim 6 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious the retaining means 16 as required by Claim 6.

Claim 6 is patentably distinct from Claims 1, 4 and 5 as there is a particularly defined additional required element that is not required by Claims 1, 4 or 5, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 7:

Claim 7, dependent on claim 6, requires (in pertinent part) the retaining means 16 to comprise “slots in said two opposing walls 12 of said cooler 10.”

The Examiner does not expressly define any structure in Nuhrah et al. ‘017 that anticipates slots comprising the retaining means 16. In fact, there is no such structure shown in Nuhrah et al. ‘017, and therefore Nuhrah et al. ‘017 does not anticipate Claim 7 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious any such structure as required by Claim 7.

Claim 7 is patentably distinct from Claims 1, 4, 5 and 6 as there is a particularly defined additional required element that is not required by Claims 1, 4, 5 and 6, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 8:

Claim 8, dependent on claim 6, requires (in pertinent part) the retaining means 16 to comprise “brackets in said two opposing walls 12 of said cooler 10.”

The Examiner does not expressly define any structure in Nuhrah et al. ‘017 that anticipates brackets comprising the retaining means 16. In fact, there is no such structure shown in Nuhrah et al. ‘017, and therefore Nuhrah et al. ‘017 does not anticipate Claim 8 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is

submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious any such structure as required by Claim 8.

Claim 8 is patentably distinct from Claims 1, 4, 5 and 6 as there is a particularly defined additional required element that is not required by Claims 1, 4, 5 and 6, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 9:

Claim 9, dependent on claim 1, requires (in pertinent part) a structure where "said stationary chute ramp member 31 is removable." As argued with regard to Claim 1, there is no structure in Nuhrah et al. '017 equal to the stationary chute ramp member 31. Even if the Examiner's position that the "curved bottom" is the same structure, there is no teaching in Nuhrah et al. '017 that it is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 9 only makes logical sense if the stationary chute ramp member 31 is removable relative to the chute 20.

Therefore Nuhrah et al. '017 does not anticipate Claim 9 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious removable stationary chute ramp member 31 as required by Claim 9.

Claim 9 is patentably distinct from Claim 1 as there is a particularly defined additional required element that is not required by Claims 1 and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 10:

Claim 10, dependent on Claim 3, requires (in pertinent part) that "said stationary chute ramp member 31 and said stationary opposing ramp member 32 are removable from said cooler 10." As previously argued with regard to Claims 1 and 3, there is no structure in Nuhrah et al. '017 equal to the stationary chute ramp member 31 or the stationary opposing ramp member 32. Even if the Examiner's position that the "curved bottom" is the same structure as the stationary opposing ramp member 32, there is no teaching in Nuhrah et al. '017 that it is removable, and likewise, no teaching in Nuhrah et al. '017 that the curved portion 5b, supposedly the equal to the stationary opposing ramp member 32, is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 10 only makes logical sense if the stationary chute ramp member 31 is removable relative to the chute 20 and stationary opposing ramp member 32 is removable relative to the main cooling compartment 17.

Therefore Nuhrah et al. '017 does not anticipate Claim 10 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious

removable stationary chute ramp member 31 and stationary opposing ramp member 32 as required by Claim 10.

Claim 10 is patentably distinct from Claims 1 and 3 as there is a particularly defined additional required element that is not required by Claims 1 and 3, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 11:

Claim 11, dependent on Claim 1, requires (in pertinent part) that “said divider wall 21 and said stationary chute ramp member 31 are removable from said cooler 10.”

The Nuhrah et al. '017 structure equal to the divider wall 21 is the central partition 2c. There is no disclosure in Nuhrah et al. '017 that the central partition 2c is removable. As argued with regard to Claim 1, there is no structure in Nuhrah et al. '017 equal to the stationary chute ramp member 31. Even if the Examiner's position that the “curved bottom” is the same structure, there is no teaching in Nuhrah et al. '017 that it is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 11 only makes logical sense if the divider wall 21 is removable relative to the chute 20 and main cooling compartment 17, since it is the divider wall 21 that defines these two areas. Since the Examiner cites compartments 2a and 2b of Nuhrah et al. '017 as corresponding to chute 20 and main cooling compartment 17 of the application, the argument that central partition 2c is removable since the entire unit 2 is

removable relative to another larger container 1 does not follow. Likewise, the stationary chute ramp member 31 being removable makes sense only if it is removable from the chute 20.

Therefore Nuhrah et al. '017 does not anticipate Claim 11 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious removable divider wall 21 and stationary chute ramp member 31 as required by Claim 11.

Claim 11 is patentably distinct from Claim 1 as there are particularly defined additional required elements that are not required by Claim 1, and as argued above these added elements are not anticipated by Nuhrah et al. '017.

Claim 12:

Claim 12, dependent on Claims 1 and 3, requires (in pertinent part) that "said divider wall 2, said stationary chute ramp member 31 and said opposing stationary ramp member are removable from said cooler 10."

The Nuhrah et al. '017 structure equal to the divider wall 21 is the central partition 2c. There is no disclosure in Nuhrah et al. '017 that the central partition 2c is removable. As previously argued with regard to Claims 1 and 3, there is no structure in Nuhrah et al. '017 equal to the stationary chute ramp member 31 or the stationary opposing ramp member 32. Even if the Examiner's position that the "curved bottom" is the same structure as the stationary opposing ramp member 32, there is no teaching in Nuhrah et al. '017 that it is removable, and likewise, no teaching in Nuhrah et al. '017 that the curved portion 5b, supposedly the equal to the stationary



opposing ramp member 32, is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 12 only makes logical sense if the divider wall 21 is removable relative to the chute 20 and main cooling compartment 17, since it is the divider wall 21 that defines these two areas. Since the Examiner cites compartments 2a and 2b of Nuhrah et al. '017 as corresponding to chute 20 and main cooling compartment 17 of the application, the argument that central partition 2c is removable since the entire unit 2 is removable relative to another larger container 1 does not follow. Likewise, the stationary chute ramp member 31 being removable makes sense only if it is removable from the chute 20, and the opposing stationary ramp member 32 removable from the main cooling compartment 17.

Therefore Nuhrah et al. '017 does not anticipate Claim 12 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious removable divider wall 21 and stationary chute ramp member 31 as required by Claim 12.

Claim 12 is patentably distinct from Claims 1 and 3 as there are particularly defined additional required elements that are not required by Claims 1 and 3, and as argued above these added elements are not anticipated by Nuhrah et al. '017.

Claim 13:

Claim 13, dependent on Claim 5, requires (in pertinent part) “a lid member 14” with “a slot 43 disposed within said lid member 14 sized to receive said divider wall 21 for storage.”

The only lid members 14 disclosed in Nuhrah et al. ‘017 are the covers 8 and 10. There is no teaching or disclosed structure to receive central partition 2c, even if such were removable, since the covers 8 and 10 of Nuhrah et al. ‘017 are much smaller than the central partition 2c.

Therefore, there is no structure shown in Nuhrah et al. ‘017 equal to the slotted lid member 14, and therefore Nuhrah et al. ‘017 does not anticipate Claim 13 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious a slotted lid member 14 as required by Claim 13.

Claim 13 is patentably distinct from Claims 1, 4 and 5 as there is a particularly defined additional required element that is not required by Claims 1, 4 and 5, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 14:

Claim 14, dependent on Claim 3, requires (in pertinent part) “a shelf 42 extending from said lower opening 25 of said chute 20 and across said bottom 11 of said cooler 10.” The Examiner states that “hinged lever arms (5) holds at least two or more bottles or cans (Fig. 3) and represents the horizontal shelf parallel to the bottom” (page 3, section 4).

It is respectfully submitted that the oscillating member 5 (referred to by the Examiner as the hinged lever arm) is not an identical structure to a shelf as required under Section 102 when acceptable definitions for the terms are applied.

Therefore, there is no structure shown in Nuhrah et al. '017 equal to the shelf 42, and therefore Nuhrah et al. '017 does not anticipate Claim 14 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious a shelf 42 as required by Claim 14.

Claim 13 is patentably distinct from Claims 1, 4 and 5 as there is a particularly defined additional required element that is not required by Claims 1, 4 and 5, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 17:

Independent claim 17 requires (in pertinent part) “a divider wall 21 extending between two opposing walls 12 of said four walls 12 and positioned generally parallel to another of said walls 12, said divider wall 21 having a bottom edge 24 spaced from said bottom 11 to define a lower opening 25, whereby the combination of said divider wall 21 and said another of said walls 12 defines a chute 20 adapted to receive beverage containers 99 aligned in a generally vertical stack; and a stationary chute ramp member 31 positioned within said chute 20, said chute ramp member 31 directing said lowermost beverage container 99 horizontally through said opening 25 along said bottom 11 and into said main cooling compartment 17” (emphasis added). Thus, the corresponding elements of the Nuhrah et al. ‘017 device relative to the ‘888 application would be as follows:

‘888 Application

‘017 Patent

chute 20

receiving compartment 2a

main cooling compartment 17

delivery compartment 2b

stationary chute ramp member 31

none

The Examiner argues in the Final Office Action of 01/19/2005 (page 3, section 4) that the “curved bottom of element 2, Fig. 3” is the disclosure of an element sufficient under Section 102 to anticipate the stationary chute ramp member 31 of the application, and further states that this curved bottom element is “for directing the cans along the bottom of the container.”

This is incorrect. The Examiner has mistakenly reversed the roles of the compartments 2a and 2b of Nuhrah et al. ‘017. The “curved bottom” is not positioned within the receiving

compartment 2a (equivalent to chute 20) and it does not direct cans along the bottom of the container, since the movement of bottles 4 is from the receiving compartment 2a into the delivery compartment 2b (left to right in the drawings), not vice versa. The structure and operation of the Nuhrah et al. '017 device (in particular the oscillating member 5) precludes any movement of bottles 4 from the delivery compartment 2b into the receiving compartment 2a. Thus the "curved bottom" does not direct cans anywhere - at most it serves as a stop to halt the rolling bottle 4. The disclosure of Nuhrah et al. '017 does not explicitly or impliedly teach a stationary chute ramp member 31. The only ramp structure in Nuhrah et al. '017 is the oscillating member 5, which by definition is not stationary, as is required by the language of claim 1.

It is respectfully submitted that Nuhrah et al. '017 does not anticipate Claim 17 and that the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious a stationary chute ramp member 31 as required by Claim 17, since the device of Nuhrah et al. '017 can only function if the oscillating member 5 is not stationary. If the oscillating member 5 was made stationary and merely inclined from the receiving compartment 2a into the delivery compartment 2b, there would be no way to elevate the bottles 4.

Claim 18:

Claim 18, dependent on claim 17, requires (in pertinent part) “opposing stationary ramp member 32 at the junction of said bottom 11 and one of said side walls 12 opposite from said stationary chute ramp member 31, whereby said opposing stationary ramp member 32 directs said beverage containers 99 in the vertical direction.”

The Examiner states that the curved portion 5b of the oscillating member 5 of Nuhrah et al. ‘017 anticipates the opposing stationary ramp member 32. Since the oscillating member 5 is by definition not a stationary member and the functioning of the Nuhrah et al. ‘017 device is dependent upon movement of the curved portion 5b, the curved portion 5b cannot anticipate the opposing stationary ramp member 32. Furthermore, the curved portion 5b of the oscillating member 5 does not vertically direct the bottles 4 into the equivalent of the application’s main cooling compartment 17, but instead prevents the movement of bottles 4 into the delivery compartment 2b.

In fact, there is no structure shown in Nuhrah et al. ‘017 equal to the opposing stationary ramp member 32, and therefore Nuhrah et al. ‘017 does not anticipate Claim 18 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious an opposing stationary chute ramp member 32 opposite to the stationary chute ramp member 31 as required by Claim 18.

Claim 18 is patentably distinct from Claim 17 as there is a particularly defined additional required element that is not required by Claim 17, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 19:

Claim 19, dependent on claim 17, requires (in pertinent part) a structure where “said divider wall 21 is removable.” The Nuhrah et al. ‘017 structure equal to the divider wall 21 is the central partition 2c. There is no disclosure in Nuhrah et al. ‘017 that the central partition 2c is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then the central partition 2c is “removable” as expressed in Claim 5 (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 19 only makes logical sense if the divider wall 21 is removable relative to the chute 20 and main cooling compartment 17, since it is the divider wall 21 that defines these two areas. Since the Examiner cites compartments 2a and 2b of Nuhrah et al. ‘017 as corresponding to chute 20 and main cooling compartment 17 of the application, the argument that central partition 2c is removable since the entire unit 2 is removable relative to another larger container 1 does not follow.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 19 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious removable divider wall 21 as required by Claim 19.

Claim 19 is patentably distinct from Claim 17 as there is a particularly defined additional required element that is not required by Claim 17, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 20:

Claim 20, dependent on claim 19, requires (in pertinent part) a structure where “said stationary chute ramp member 31 is removable.” As argued with regard to Claim 17, there is no structure in Nuhrah et al. ‘017 equal to the stationary chute ramp member 31. Even if the Examiner’s position that the “curved bottom” is the same structure, there is no teaching in Nuhrah et al. ‘017 that it is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 20 only makes logical sense if the stationary chute ramp member 31 is removable relative to the chute 20.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 20 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious removable stationary chute ramp member 31 as required by Claim 20.

Claim 20 is patentably distinct from Claims 17 and 19 as there is a particularly defined additional required element that is not required by Claims 17 and 19 and as argued above this added element is not anticipated by Nuhrah et al. ‘017.



Claim 21:

Claim 21, dependent on claim 18, requires (in pertinent part) a structure where “said divider wall 21 is removable.” The Nuhrah et al. ‘017 structure equal to the divider wall 21 is the central partition 2c. There is no disclosure in Nuhrah et al. ‘017 that the central partition 2c is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then the central partition 2c is “removable” as expressed in Claim 5 (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 21 only makes logical sense if the divider wall 21 is removable relative to the chute 20 and main cooling compartment 17, since it is the divider wall 21 that defines these two areas. Since the Examiner cites compartments 2a and 2b of Nuhrah et al. ‘017 as corresponding to chute 20 and main cooling compartment 17 of the application, the argument that central partition 2c is removable since the entire unit 2 is removable relative to another larger container 1 does not follow.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 21 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious removable divider wall 21 as required by Claim 21.

Claim 21 is patentably distinct from Claims 17 and 18 as there is a particularly defined additional required element that is not required by Claims 17 and 18, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 22:

Claim 22, dependent on Claim 21, requires (in pertinent part) that “said stationary chute ramp member 31 and said opposing stationary ramp member 32 are removable.” As previously argued with regard to Claims 17 and 18, there is no structure in Nuhrah et al. ‘017 equal to the stationary chute ramp member 31 or the stationary opposing ramp member 32. Even if the Examiner’s position that the “curved bottom” is the same structure as the stationary opposing ramp member 32, there is no teaching in Nuhrah et al. ‘017 that it is removable, and likewise, no teaching in Nuhrah et al. ‘017 that the curved portion 5b, supposedly the equal to the stationary opposing ramp member 32, is removable. The Examiner appears to argue that since the whole unit 2 is removable, since it is designed to be used as an insert within an ice box 1, then all elements are by definition removable (page 3, section 4).

It is submitted that this is not a reasonable position. Claim 22 only makes logical sense if the stationary chute ramp member 31 is removable relative to the chute 20 and stationary opposing ramp member 32 is removable relative to the main cooling compartment 17.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 22 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious removable stationary chute ramp member 31 and stationary opposing ramp member 32 as required by Claim 22.

Claim 22 is patentably distinct from Claims 17, 18 and 21 as there is a particularly defined additional required element that is not required by Claims 17, 18 and 21, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 24:

Claim 24, dependent on claim 5, requires (in pertinent part) “retainer means 16 positioned on said two opposing walls 12 to retain said divider wall 21.” The Examiner states the retainer means is the “outer lip (1, Fig. 1)” of Nuhrah et al. ‘017 (page 3, section 4). This is not corresponding structure, since element 1 of Nuhrah et al. ‘017 is the larger ice box, and thus does not “retain” the central partition 2c as required by the claim language.

Therefore Nuhrah et al. ‘017 does not anticipate Claim 24 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious the retainer means 16 as required by Claim 24.

Claim 24 is patentably distinct from Claims 17 and 19 as there is a particularly defined additional required element that is not required by Claims 17 and 19, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

Claim 25:

Claim 25, dependent on claim 24, requires (in pertinent part) the retainer means 16 to comprise “slots positioned on said two opposing walls 12.”

The Examiner does not expressly define any structure in Nuhrah et al. ‘017 that anticipates slots comprising the retainer means 16. In fact, there is no such structure shown in Nuhrah et al. ‘017, and therefore Nuhrah et al. ‘017 does not anticipate Claim 25 and the

rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious any such structure as required by Claim 25.

Claim 25 is patentably distinct from Claims 17, 19 and 24 as there is a particularly defined additional required element that is not required by Claims 17, 19 and 24 , and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 26:

Claim 26, dependent on claim 24, requires (in pertinent part) the retainer means 16 to comprise "brackets positioned on said two opposing walls 12."

The Examiner does not expressly define any structure in Nuhrah et al. '017 that anticipates brackets comprising the retainer means 16. In fact, there is no such structure shown in Nuhrah et al. '017, and therefore Nuhrah et al. '017 does not anticipate Claim 26 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. '017 that would make obvious any such structure as required by Claim 26.

Claim 26 is patentably distinct from Claims 17, 19 and 24 as there is a particularly defined additional required element that is not required by Claims 17, 19 and 24, and as argued above this added element is not anticipated by Nuhrah et al. '017.

Claim 27:

Claim 27, dependent on Claim 19, requires (in pertinent part) “a slot 43 disposed within said lid 14, said slot adapted to receive said divider wall 21 for storage.”

The only lid members 14 disclosed in Nuhrah et al. ‘017 are the covers 8 and 10. There is no teaching or disclosed structure to receive central partition 2c, even if such were removable, since the covers 8 and 10 of Nuhrah et al. ‘017 are much smaller than the central partition 2c.

Therefore, there is no structure shown in Nuhrah et al. ‘017 equal to the slotted lid 14, and therefore Nuhrah et al. ‘017 does not anticipate Claim 27 and the rejection under Section 102 is not properly supported and should be reversed. In addition, it is submitted that there is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious a slotted lid member 14 as required by Claim 27.

Claim 27 is patentably distinct from Claims 17 and 19 as there is a particularly defined additional required element that is not required by Claims 17 and 19, and as argued above this added element is not anticipated by Nuhrah et al. ‘017.

**II. Whether claims 16 and 23 are unpatentable under 35 U.S.C. 103(a) over Nuhrah et al. '017.**

A rejection under Section 103(a) requires that the combined prior art references teach or suggest all the claim limitations (MPEP 706.02(j), further based on the requirements of Graham v. John Deere, 383 U.S. 1, 148 459 (1966) and MPEP 2141-2144.9).

Claim 16:

Claim 16, dependent on claim 4, is dependent on independent claim 1, which requires (in pertinent part) “a generally vertically oriented chute 20 sized to receive horizontally disposed beverage containers 99 in a generally vertical stack, said chute 20 having a lower opening 25 providing ingress into said main cooling compartment 17; and a stationary chute ramp member 31 positioned within said chute 20, said chute ramp member 31 directing said lowermost beverage container 99 horizontally through said opening 25 along said bottom 11 and into said main cooling compartment 17” (emphasis added). Claim 16 requires (in pertinent part) “apertures 41 positioned in said divider wall 21.” Thus, the corresponding elements of the Nuhrah et al. '017 device relative to the '888 application would be as follows:

'888 Application

chute 20

main cooling compartment 17

divider wall 21

'017 Patent

receiving compartment 2a

delivery compartment 2b

partition wall 2c

stationary chute ramp member 31     none

The Examiner argues in the Final Office Action of 01/19/2005 (page 3, section 4) that the “curved bottom of element 2, Fig. 3” is the disclosure of an element sufficient under Section 102 to anticipate the stationary chute ramp member 31 of the application, and further states that this curved bottom element is “for directing the cans along the bottom of the container.” It is submitted that not only is the disclosure of Nuhrah et al. ‘017 insufficient under Section 102, it is equally insufficient under Section 103 as grounds for a rejection.

The Examiner has mistakenly reversed the roles of the compartments 2a and 2b of Nuhrah et al. ‘017. The “curved bottom” is not positioned within the receiving compartment 2a (equivalent to chute 20) and it does not direct cans along the bottom of the container, since the movement of bottles 4 is from the receiving compartment 2a into the delivery compartment 2b (left to right in the drawings), not vice versa. The structure and operation of the Nuhrah et al. ‘017 device (in particular the oscillating member 5) precludes any movement of bottles 4 from the delivery compartment 2b into the receiving compartment 2a. Thus the “curved bottom” does not direct cans anywhere - at most it serves as a stop to halt the rolling bottle 4. The disclosure of Nuhrah et al. ‘017 does not make obvious, teach, suggest or motivate one to provide a stationary chute ramp member 31. The only ramp structure in Nuhrah et al. ‘017 is the oscillating member 5, which by definition is not stationary, as is required by the language of claim 1.

There is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious a stationary chute ramp member 31 as required by Claim 1, since the device of Nuhrah et al. ‘017 can only function if the oscillating member 5 is not stationary. If the oscillating member 5 was made stationary and merely inclined from the receiving compartment

2a into the delivery compartment 2b, there would be no way to elevate the bottles 4. Thus, a rejection of claim 16 under Section 103(a) is not well founded, since combining the teachings of Juhrah et al. with those of Clark et al. '587 would not make obvious, suggest, teach or motivate the invention as claimed herein.

Claim 23:

Claim 23 is dependent on independent claim 17, which requires (in pertinent part) “a divider wall 21 extending between two opposing walls 12 of said four walls 12 and positioned generally parallel to another of said walls 12, said divider wall 21 having a bottom edge 24 spaced from said bottom 11 to define a lower opening 25, whereby the combination of said divider wall 21 and said another of said walls 12 defines a chute 20 adapted to receive beverage containers 99 aligned in a generally vertical stack; and a stationary chute ramp member 31 positioned within said chute 20, said chute ramp member 31 directing said lowermost beverage container 99 horizontally through said opening 25 along said bottom 11 and into said main cooling compartment 17” (emphasis added). Claim 23 requires (in pertinent part) “apertures 41 positioned in said divider wall 21.” Thus, the corresponding elements of the Nuhrah et al. '017 device relative to the '888 application would be as follows:

'888 Application

chute 20

main cooling compartment 17

divider wall 21

'017 Patent

receiving compartment 2a

delivery compartment 2b

partition wall 2c



stationary chute ramp member 31     none

The Examiner argues in the Final Office Action of 01/19/2005 (page 3, section 4) that the “curved bottom of element 2, Fig. 3” is the disclosure of an element sufficient under Section 102 to anticipate the stationary chute ramp member 31 of the application, and further states that this curved bottom element is “for directing the cans along the bottom of the container.” It is submitted that not only is the disclosure of Nuhrah et al. ‘017 insufficient under Section 102, it is equally insufficient under Section 103 as grounds for a rejection.

The Examiner has mistakenly reversed the roles of the compartments 2a and 2b of Nuhrah et al. ‘017. The “curved bottom” is not positioned within the receiving compartment 2a (equivalent to chute 20) and it does not direct cans along the bottom of the container, since the movement of bottles 4 is from the receiving compartment 2a into the delivery compartment 2b (left to right in the drawings), not vice versa. The structure and operation of the Nuhrah et al. ‘017 device (in particular the oscillating member 5) precludes any movement of bottles 4 from the delivery compartment 2b into the receiving compartment 2a. Thus the “curved bottom” does not direct cans anywhere - at most it serves as a stop to halt the rolling bottle 4. The disclosure of Nuhrah et al. ‘017 does not make obvious, teach, suggest or motivate one to provide a stationary chute ramp member 31. The only ramp structure in Nuhrah et al. ‘017 is the oscillating member 5, which by definition is not stationary, as is required by the language of claim 17.

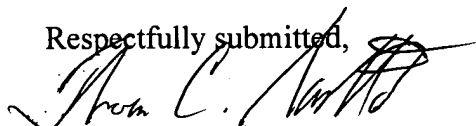
There is no structure taught, disclosed, suggested or inherent in Nuhrah et al. ‘017 that would make obvious a stationary chute ramp member 31 as required by Claim 17, since the device of Nuhrah et al. ‘017 can only function if the oscillating member 5 is not stationary. If the oscillating member 5 was made stationary and merely inclined from the receiving

compartment 2a into the delivery compartment 2b, there would be no way to elevate the bottles

4. Thus, a rejection of claim 23 under Section 103(a) is not well founded, since combining the teachings of Juhrah et al. with those of Clark et al. '587 would not make obvious, suggest, teach or motivate the invention as claimed herein.

For the reasons set forth above, it is respectfully requested that the final rejection of the claims at issue be reversed in whole, and that the claims be passed for allowance and issue. In brief summation, the Nuhrah et al. '017 prior art does not anticipate under Section 102 nor make obvious under Section 103 the invention as claimed.

Respectfully submitted,

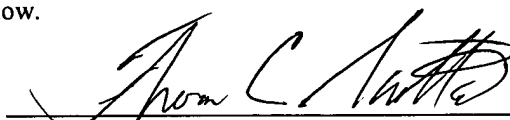
  
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The undersigned certifies that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below.

9/13/05  
Date

  
Thomas C. Saitta



(9) Appendix:

Claims:

1. In a cooler for beverage containers wherein the beverage containers are chilled by direct contact with ice and ice water, said cooler having walls and a bottom defining in combination a main cooling compartment accessible through an open top and sized to retain multiple beverage containers along said bottom, the improvement comprising:

a generally vertically oriented chute sized to receive horizontally disposed beverage containers in a generally vertical stack, said chute having a lower opening providing ingress into said main cooling compartment; and

a stationary chute ramp member positioned within said chute, said chute ramp member directing said lowermost beverage container horizontally through said opening along said bottom and into said main cooling compartment.

2. (canceled)

3. The cooler of claim 1, the improvement further comprising an opposing stationary ramp member positioned across said bottom opposite said stationary chute ramp member, said opposing stationary ramp member directing said beverage containers vertically within said main cooling compartment.

4. The cooler of claim 1, wherein said chute is defined by a divider wall positioned between two opposing walls of said cooler and adjacent a remaining wall of said cooler.
5. The cooler of claim 4, wherein said divider wall is removable.
6. The cooler of claim 5, the improvement further comprising retaining means on said two opposing walls of said cooler to retain said divider wall.
7. The cooler of claim 6, wherein said retaining means comprise slots in said two opposing walls of said cooler.
8. The cooler of claim 6, wherein said retaining means comprise brackets on said two opposing walls of said cooler.
9. The cooler of claim 1, wherein said stationary chute ramp member is removable from said cooler.
10. The cooler of claim 3, wherein said stationary chute ramp member and said stationary opposing ramp member are removable from said cooler.
11. The cooler of claim 1, wherein said chute is defined by a divider wall positioned between two opposing walls of said cooler and adjacent a remaining wall of said cooler, and wherein said divider wall and said stationary chute ramp member are removable from said cooler.

12. The cooler of claim 3, wherein said chute is defined by a divider wall positioned between two opposing walls of said cooler and adjacent a remaining wall of said cooler, and wherein said divider wall, said stationary chute ramp member and said opposing stationary ramp member are removable from said cooler.

13. The cooler of claim 5, wherein said cooler further comprises a lid member, and the improvement further comprises a slot disposed within said lid member sized to receive said divider wall for storage.

14. The cooler of claim 3, the improvement further comprising a shelf extending from said lower opening of said chute and across said bottom of said cooler.

15. The cooler of claim 14, the improvement further comprising a reversing ramp member positioned on a wall of said cooler above said opposing ramp member, whereby said beverage cans are diverted onto said shelf.

16. The cooler of claim 4, the improvement further comprising apertures positioned in said divider wall.

17. A cooler for beverage containers wherein beverage containers are chilled by direct contact with ice and ice water, said cooler comprising in combination:

four walls, a bottom, an open top, and a lid adapted to cover said open top;

a divider wall extending between two opposing walls of said four walls and positioned generally parallel to another of said walls, said divider wall having a bottom edge spaced from said bottom to define a lower opening, whereby the combination of said divider wall and said another of said walls defines a chute adapted to receive beverage containers aligned in a generally vertical stack; and

a stationary chute ramp member positioned at the junction of said bottom and said another of said walls, whereby said stationary chute ramp member directs the lowermost of said beverage containers disposed in said chute horizontally through said lower opening and into said main cooling compartment.

18. The cooler of claim 17, further comprising an opposing stationary ramp member at the junction of said bottom and one of said side walls opposite from said stationary chute ramp member, whereby said opposing stationary ramp member directs said beverage containers in the vertical direction.

19. The cooler of claim 17, wherein said divider wall is removable.

20. The cooler of claim 19, wherein said stationary chute ramp member is removable.

21. The cooler of claim 18, wherein said divider wall is removable.

22. The cooler of claim 21, wherein said stationary chute ramp member and said opposing stationary ramp member are removable.

23. The cooler of claim 17, further comprising apertures positioned in said divider wall.

24. The cooler of claim 19, further comprising retainer means positioned on said two opposing walls to retain said divider wall.

25. The cooler of claim 24, wherein said retainer means comprises slots positioned on said two opposing walls.

26. The cooler of claim 24, wherein said retainer means comprises brackets positioned on said two opposing walls.

27. The cooler of claim 19, further comprising a slot disposed within said lid, said slot adapted to receive said divider wall for storage.